PUBLIC PROSECUTOR v. SELVRAJ SUBRAMANIAN

[O. Cr. J. (Lai Kew Chai J.) November 2, 1984]

[Singapore - Criminal Case No. 18 of 1983]

Criminal Law and Procedure – Accused causing death of wife – Prima facie case – Culpable homicide not amounting to murder – Defence of accidental asphyxia – No reasonable doubt raised – Mitigation in sentence – Penal Code (Cap. 103), s.304(b).

Penal Code, s. 304(b) – Culpable homicide not amounting to murder – Mitigating factors.

In this case, the accused, a police inspector aged 35, was charged with culpable homicide not amounting to murder by causing the death of his wife, a police corporal, on August 17, 1982, an offence punishable under s. 304(b) of the Penal Code.

The prosecution evidence shows that the accused, his wife ("the deceased"), his 14-year-old-step-son, Henry and their natural daughter Sheila were staying in police quarters. Their marriage had not been a happy one, largely owing to the unfaithfulness of the accused who had several affairs outside marriage. After the accused returned home at about 11.30 p.m. on August 16, 1982, a heated quarrel broke out as love-bites were found by the deceased on the neck of the accused. The deceased continued to question the accused about the love-bites. When they were in the master bedroom, quarrels between them resumed and Henry heard punching sounds. He heard two screams from the deceased. The first scream was a loud one but the second scream was muffled. Later Henry heard the accused say over the phone "This is an emergency. My address is Room 11, Block 'E', Queensway, Police Task Force II. Come quick." Henry also heard the accused say over another phone call "I believe my wife is dead. Please come quick." The police radio division received a message at 0114 hours on August 17, 1982 from the accused who said "Dead .... Dead". The accused telephoned his superior saying: "Sir, this is Inspector Selvraj. I have killed my wife." An ambulance officer, Madam Lee saw foam or froth in the mouth of the deceased. She certified the deceased dead. The cloth containing the wet patch was sent for examination and it was proved that the deceased's saliva was present and there was no gastric juices of the deceased. Forensic Pathologist Prof. Chao examined the deceased at the scene at about 0230 hours of the same morning and he ascertained that death had occurred within 2 hours of his examination. The autopsy was carried out on the same morning and Prof Chao certified that the cause of death was asphyxia from smothering.

The Court called upon the accused to enter upon his defence. His version was substantially similar to that given in his statement. The crux of the defence was that the deceased charged at him and attempted to claw his eyes. He stopped the advance of the deceased by holding her neck with his left hand and stabbed her with a clenched first on her left arm. The accused said he then rained blows on the deceased who fell forward, face down. The deceased fell with her face on his pillow on his side of the bed. She was groaning, crying and mumbling. He later found her dead. The accused called expert forensic pathologist Dr. Dharamvir to testify on his behalf. Dr. Dharamvir offered the opinion that the deceased could have suffered concussion and could have asphyxiated accidentally.

Held: (1) the onus is always on the prosecution to prove the ingredients of the charge beyond reasonable doubt. The defence is not obliged in law to prove his defence. He has only to raise a reasonable doubt whereupon he is entitled to the benefit of the doubt;

(2) no reasonable inference favourable to the accused could be reasonably drawn from the evidence. The deceased had not concussed or asphyxiated accidentally;

(3) the court is irresistibly drawn to the conclusion that the accused did smother the deceased to death, knowing that his act of smothering would be likely to cause her death. Accordingly, the accused was convicted as charged;

(4) taking into account the mitigating factors, the court sentenced the accused to 8 years' imprisonment, taking effect from August 17, 1982.

CRIMINAL TRIAL.

Fong Kwok Jen (*Ho Meng Hee* with him) for the Public Prosecutor.

Pala R. Krishnan (*M.P. Kanisan* with him) for the accused.

Cur. Adv. Vult.

Lai Kew Chai J. : The accused, Selvraj Subramaniam, male 35, stood indicted before me of having on August 17, 1982 at about 0114 hours at his home, Room 11, Apartment Block 'E', Police Task Force Base, Queensway, Singapore committed culpable homicide not amounting to murder by causing the death of his wife, Madam Lim Guek Kiau, an offence punishable under section 304(b) of the Penal Code.

According to the evidence led by the prosecution, the accused, then an Inspector of Police and attached to the Beach Road Police Station, married the deceased in February, 1973. On the date of her death, the deceased was a police corporal. They had a step-son, of her earlier marriage, one Henry Selvraj who was then of about 14 years and a natural daughter, Sheila Selvraj, who was about 9 years old. All of them were staying in police quarters.

Their marriage had not been a happy one, largely due to the unfaithfulness of the accused who had several affairs outside marriage. At about 1130 hours on August 16, 1982 the accused returned home. He changed into his sarong and had dinner. After a while a heated quarrel broke out as love-bites were found by the deceased on the neck

of the accused. According to Henry Selvraj, who was then lying in bed in his room which he shared with his sister, he did not hear the accused give any answer. His room door was open, as always. A short while later, Henry Selvraj saw the accused go into the master bedroom which he shared with the deceased. He heard the door slammed shut and he heard the door of the master bedroom locked from the inside. The deceased banged the door hard but was refused entry. Later on, Henry Selvraj heard the sound of someone opening a window, which to him was probably the study room window. Then he later noticed that the lights of his parents' room were switched on. He again heard his mother questioning the accused about the love-bites. He saw the light rays in the cracks between his room and his parents' room which were adjoining each other. Soon afterwards, Henry Selvraj heard the sound of commotion coming out of his parents' room as if someone was punching another person. At that moment, Sheila left the room and went to the toilet. She slammed the toilet door. As she was returning to the room, she was called into the master bedroom and rebuked by the accused for slamming the toilet door. She later returned to the room crying.

A few minutes later, Henry Selvraj saw his mother and the accused walking out of the master bedroom. He then saw the lights of the kitchen being switched on. He also heard the refrigerator being opened and closed. Later, he saw his father going back to the master bedroom. He also saw the mother going into the toilet, after which the mother returned to the master bedroom. Henry Selvraj noticed that his mother was sobbing as she was entering the room.

When they were in the master bedroom, quarrels between the accused and the deceased resumed. Henry Selvraj heard punching sounds. At this stage, Henry Selvraj's evidence on what he had heard and what had followed are crucial to the case for the prosecution. He heard two screams from the deceased. The first scream was a loud one but the second scream was muffled. He described the muffled sound of the mother as that of a person whose mouth had been blocked by something. According to Henry Selvraj, there was silence for some 10 to 15 minutes, after which he saw the accused coming out of the master bedroom, switched on the lights and made a telephone call. saying: "I believe my wife is dead. Please come quick."

On hearing this, Henry Selvraj and his sister went out of their room and stood near the door to the master bedroom. The accused saw them and told them that their mother was sleeping and asked them to go to sleep.

The radio division of the police received a message at 0114 hours on August 17, 1982 from the accused who said "Dead .... Dead". At about 0140 hours the same morning, the accused telephoned his superior, Ag. Superintendent of Police Ronald Gan Chong Cheng. The accused said to him: "Sir, this is Inspector Selvraj. I have killed my wife." When asked what had happened, the accused said that it was over a fist fight.

At about 0121 hours on August 17, 1982 Madam Lee Sok Howang, an ambulance officer, and her male colleague arrived at the flat of the accused and the deceased in response to an emergency call. Madam Lee found the deceased lying supine on the bed, on the side nearer the entrance door and further from the window. The deceased was clothed in a blouse and skirt. According to Madam Lee, the accused said that the deceased had taken something when she asked him what had happened to get the case history. Madam Lee examined the mouth of the deceased and saw some foam or froth in the mouth. It was whitish in colour. She did not see any obvious injury on her face but she saw bruises in the insides of her lips, up and down. But the deceased was slightly cyanosed around the lips, finger tips and the toes.

The ambulance officer shifted the body of the deceased from the bed onto the floor. She then applied external cardiac pulmonary resuscitation on her for about ten minutes. There was, however, no response from her. Madam Lee checked her pulse and eyes. There was no pulse and her pupils were fixed and dilated. She then certified her dead.

The Police arrived twenty minutes later and Madam Lee informed them that the deceased was dead. The body was taken back to the bed and placed approximately at the place where she was first found by the ambulance officer. The scene was preserved.

Inspector Neethianathan who had initially handled the investigation saw a wet patch on the bed sheet cover. He circled the patch and caused to be cut the cloth containing the wet patch both on the white and light blue bedsheet (Exhibit P40) and the floral designed mattress cover (Exhibit P39). He also seized, inter alia, a pillow case (Exhibit 37), a pillow without case (Exhibit P38)

and took a saliva swab from the deceased's mouth and a control sample all of which he handed over to Inspector S Suppiah who took over the investigation when the latter arrived at the flat at about 0315 hours. Inspector Suppiah handed these exhibits to the Department of Scientific Services for examination of the saliva and its grouping. Mr Teo Teng Poh, the Principal Scientific Officer of the Department, reported that the bedsheet and mattress cover had contained the saliva of the deceased. He was of the view, which I accept, that on the two exhibits there were no gastric juices of the deceased, indicating that there was no vomitus, seeing that saliva was present in the samples of the exhibits. If there had been any gastric juice, the hydrochloric acid present would have destroyed the amylase in the saliva and the saliva found would not have remained.

Mr Teo Teng Poh also reported that no saliva was found on the pillow case nor on the pillow without the case. This piece of evidence indicated that the deceased had not salivated on the pillow with the pillow case in position.

The Forensic Pathologist, Professor Chao Tzee Cheng, arrived at the scene at about 0230 hours of the same morning. On arrival, he examined the deceased and ascertained that death had occurred within 2 hours of his examination. He also noticed the wet patch on the top left hand corner of the bed. He thought it was saliva. The tests later carried out by Teo Teng Poh of the Scientific Services Department confirmed that they were saliva and could not have contained any gastric juices. If there were gastric juices, there would be hydrochloric acid which would destroy the amylase in the saliva. The fact that there was saliva over the areas of the bed sheet, and the mattress cover, which were cut from the wet area as found by the Police and the Forensic Pathologist confirms beyond any reasonable doubt that there were no gastric juices present on the wet patch.

The deceased was lying face up when she was found dead. Therefore post mortem lividity was established at the back. *Rigor mortis* appeared at the jaw only. The body was still warm to touch when Professor Chao examined the deceased.

The autopsy was carried out at 0900 hours on the same morning. Post mortem examination disclosed that cyanosis of lips and finger tips was present. The tongue was protruding between the teeth and the tip of the tongue was also cyanotic. As far as external injuries were concerned, Professor Chao found that the deceased suffered two small bruises at the left upper arm near the armpit both measuring 2.5 x 1.5 cms, as shown in the photograph Exhibit P21. In his opinion, and in view of the circular bruises, they were probably caused by finger pressures. I have no doubt that Professor Chao's opinion was correct. The right leg of the deceased also showed a 4 x 2 cms bruise with a linear abrasion over it.

I now refer to the internal injuries found on the deceased. On reflection of the scalp, bruises were found at the right frontal region, 2 x 1 cm, right parietal region 3.5 x 3 cms and the left occipital region of 2 x 1 cm. Professor Chao considered these injuries were superficial which could have been caused by punches. The brain did not suffer any lesion or any damage. He did not think that these injuries would have concussed the deceased. The brain was cynaotic in colour and oedematous, *i.e.* swollen and congested owing to the lack of oxygen. The entire respiratory system was examined by the Professor who said that the trachea and the bronchi contained some froth and that both lungs of the deceased were swollen and showed petechial haemorrhages on the pleural surface.

Professor Chao certified the cause of death was asphyxia from smothering. Professor Chao expressed the opinion that a person whose head is pressed against the mattress in the region of the relatively big wet patch could be smothered to death and would salivate quite extensively. In this case, the prosecution has proved that the saliva found on the wet patch was that of the deceased. The Professor did not think that in the circumstances of this case, the smothering could be accidental, without the application of pressure on the head of the deceased by another person. He did not rule out the possibility but it was remote. He said that the mattress was not so soft as could mould around the nose and mouth of the deceased and thus creating an air-tight situation. As an adult, and unlike a child, the deceased's features were more prominent and the facial area was larger than a child's.

At about 0820 hours on August 17, 1982 the accused made a statement to Inspector S Suppiah under section 121(6) of the CPC, the admission of which the accused did not challenge. He said that he returned home at about 2330 hours the previous night and after dinner his wife saw the love-bites around his neck and started to abuse him, wanting to know who had given him the love-bites. The abuse continued when they went into the

master bedroom. For some reason, the deceased went out of the room and he locked her out, not wanting to aggravate the situation. Knowing that his wife had gained entry into his room in the past by climbing through the bedroom window, he closed the window but had not locked it. He then dozed off. All he knew later was that she was in the room.

The rest of his statement was in the following terms:-

"She was seated on the floor beside the bed. She continued abusing me with vulgar language. I told her not to raise her voice as the neighbours may hear her. She persisted and carried on abusing me. I then took a pillow and threw at her face to quieten her. She then charged at me and I got up from the bed and there was a scuffle. When she attacked me, I retaliated and delivered some punches. I do not know as to where I had punched her. She fell on the bed and started to groan. I paid no heed to her and left for the hall with the pillow and blanket in order to sleep on the sofa. I lied on the sofa for about ten minutes after which decided to console her. When I entered the room, I found her sleeping on her side. I went up to her and attempted to console her, but there was no response. I made her lie in a recumbent position and shook her thinking that she was feigning unconsciousness. She did not response and this time I saw her frothing from the mouth. I checked her heart beat and pulse and found that they were not beating. I applied artificial resuscitation but was unable to revive her. It was then that I called for the ambulance. The ambulance subsequently arrived and pronounced her dead.

At the close of the case for the prosecution I was satisfied that there was credible evidence proving that the accused had caused the death of his wife by smothering her and that he knew that the act of smothering his wife was likely to cause death. Counsel for the Defence did not make any submission that the prosecution had not made out its case. I therefore called upon the accused to enter upon his defence.

The accused elected to give evidence after I had administered the usual allocution. His version was substantially similar to that given in his statement. By way of elaboration, he went on to say that as he threw the small pillow on the deceased, the deceased charged at him. He drew himself up and stood on his pillow. The deceased climbed onto the bed and standing on the bed she attempted to claw his eyes. He said he stopped the advance of the deceased by holding her neck with his left hand and stabbed her with a clenched fist on her left arm. He ventured the opinion that this latter action probably accounted for the two bruises on the inner left arm of the deceased. The accused said that he then rained blows on the deceased who fell forward, face down. The deceased fell with her face on his pillow on his side of the bed. After the fall, her face was lying sideways on the pillow. She was groaning, crying and mumbling. He walked out of the bedroom. Before doing so, he gathered his blanket, the small pillow on which she was lying. The deceased was still crying and groaning. He also took his revolver and the holster from the top of the cupboard in the bedroom and went out to sleep at the sofa in the hall.

According to the accused, he could not sleep at the sofa. After some 10 – 15 minutes he felt sorry for his wife and he returned to the room, intending to console her. He found her dead.

As some proof that he had gone out of the room to make bed at the sofa, the accused pointed to the presence of his pillow at the sofa as captured in the photograph of the hall exhibit P4 which was taken by the police. He also proved that the revolver and the leg holster were retrieved from underneath the seat cushion nearest the fish-tank of the sofa in the hall which were handed to Ag. Superintendent Ronald Gan.

The accused called Dr. Dharamvir Singh as an expert forensic pathologist to testify on his behalf. Dr Dharamvir Singh offered the opinion that the deceased could have suffered concussion and could have been asphyxiated accidentally. He said that looking at the photographs of the reflected scalp and since brain injury from a severe concussion was sub-microscopic, the deceased could have fallen on the head rest of the bed or on the wall nearest the bed and could have suffered a whiplash, in which case the deceased would have lapsed into unconsciousness almost immediately.

In coming to the opinion that asphyxiation could have been accidental, Dr Dharamvir Singh noted that there were several features which he said in his view pointed against any intentional smothering or which suggested that it could have been accidental. He noted that the bedroom did not show any sign of a struggle. The contents on the dressing table and the side table were intact. The deceased did not have saliva stains on her face, in the region of her mouth nor were there any fibres found. There were no bite marks on the bedsheet. He said one could reasonably expect more external injuries on the deceased if the smothering had been deliberate. It was odd, he said, that the bruise was at the angle of the mouth which might have been caused by the misuse of the air-vivor in the course of resuscitation. He felt that the lips should have been bruised by the lower set of teeth

if pressure had been applied from the rear of the head of the deceased. It was also significant, he said, that the accused had not suffered any injuries, such as scratch marks.

Dr. Dharamvir Singh highlighted what he considered as an important feature in the case. If the deceased had been deliberately smothered to death, there would have been evidence of blanching of the skin on the face of the deceased.

The onus is always on the prosecution to prove the ingredients of the charge beyond reasonable doubt. The defence is not obliged in law to prove his defence. He has only to raise a reasonable doubt whereupon he is entitled to the benefit of the doubt. Having considered the evidence, I am irresistibly drawn to the conclusion that the accused did smother his wife to death, knowing that his act of smothering would likely to cause her death. No reasonable inference, which is favourable to the accused, could be reasonably drawn from the evidence. I am convinced that the deceased had not asphyxiated accidentally. I accept Henry Selvraj's evidence and find that the accused had smothered the deceased at the time Henry Selvraj heard the second scream which was muffled. Death occurred in the ensuing 10 minutes or so of silence in the master bedroom. I do not believe the accused at all that he had left the room to make bed at the sofa in the hall. The sequence of events in the master bedroom had happened in exactly the way Henry Selvraj had described it. He was not mistaken at all, as the accused had suggested. Although he was angry with his step-father, who he did not hold with affection, I have no doubt in my mind that his evidence was the truth of the matter. It was submitted by Counsel for the defence that Henry Selvraj was contradicted by Rabiayth bte Ali, a neighbour living in the flat immediately below, who said she did not hear any screams. As she had fallen asleep during the second and fateful fight, she could not have heard anything. In my view, there was no contradiction at all. Although there were some discrepancies in Henry Selvraj's evidence at the Preliminary Inquiry and those given before me, they were minor. His evidence on the second and fateful fight, including the two screams, and what followed thereafter remained unshaken. As for the accused's pillow and revolver and holster on the sofa, I am convinced that the accused had placed them there after the event. Whilst waiting for the ambulance, he had the opportunity to do so. He had, in fact, changed from his sarong into his pants. In listening to his evidence, I formed the impression that the accused was a person who knew police investigation procedures rather well and was capable of providing evidence to explain what he had done or said. For instance, to explain away his statement to the ambulance officer that the deceased had taken something, he said the deceased, he thought, had taken sleeping pills. To support his allegation that the froth found in the mouth of the deceased was like stout foam, he suggested that the deceased had drunk the stout in the refrigerator which was a complete fabrication. Seeing that the deceased was cyanosed he must have known that his wife had asphyxiated. Yet to explain his confession to Superintendent Ronald Gan, he said that in his mind he thought his punches had killed his wife. He said all these although in the same breath he said he was confused. I do not believe him when he said in his statement that the deceased had expressed froth when he tried to resuscitate her.

I turn now to the expert evidence. I prefer the evidence of Professor Chao Tzee Cheng who was at the scene and who personally carried out the autopsy. I accept his evidence that the head injuries were superficial which could not have brought about concussion. Dr Dharamvir Singh saw the slide of the brain. He agreed that there was no lesion in the brain. A prolonged state of unconsciousness brought about by a concussion was accordingly out of the question. Pressure was applied on the head of the deceased when she was smothered and in the process the salivary glands were activated which accounted for the big patch of saliva found on the bedsheet and the mattress cover.

In cross-examination, Dr Dharamvir Singh quite properly admitted that if the deceased had been effectively immobilised that would have explained the lack of evidence of struggle in the room as well as the lack of injuries or of more injuries on the accused and the deceased. As for the criticism that no test for fibres on the face of the deceased was carried out, it was plain that the environment in the room was not fibre free. The result of any test would have been innocuous. The bite marks on the bedsheet could not have been made if the deceased had opened her mouth to breathe, as she must have done. With regard to the lack of blanching, Dr Dharamvir Singh quite properly conceded that such blanching could have been masked by the circulatory function continuing to function briefly after brain death had occurred and by the massaging of the deceased's mouth and face in the course of the resuscitatory efforts during which the body of the deceased had

also been moved both by the accused and the ambulance officer.

The deceased was clearly not concussed. If she was, she would have lapsed into unconsciousness almost immediately. In which case, she could not have groaned and cried for that length of time, if the evidence of the accused were to be believed.

For her to have asphyxiated accidentally, she had to be smothered on her own pillow in an air-tight situation in which she was denied air completely for some 3 – 5 minutes. It meant that she had rolled over from one side of the bed to the other and had settled onto the pillow face down in an air-tight condition. Although it was speculated that she could have done this in a state of convulsion, there had to happen another contingency, happening coincidentally and necessarily at a particular time. She had to convulse further, during which her head would have left the pillow, ending at the wet patch where she expressed the terminal pulmonary froth. This had to be the sequence if Dr Dharamvir Singh's theory is to hold because her pillow was examined and analysed and no saliva was found. Further, it was highly unlikely that she could have asphyxiated on the mattress, which had a relatively less soft surface, with the mere weight and pressure of her head. Both experts agreed that an accidental smothering on the mattress would have required the unconscious deceased to lie face down on the mattress for an hour or two, which the circumstances of this case ruled out completely.

I am in all the circumstances convinced that the smothering was not at all accidental.

I was invited by Counsel for the defence to find that if the accused had smothered his wife to death, the act of smothering was a rash act punishable under section 304A of the Penal Code. Clearly, this submission must fail. It was culpable homicide. I have no doubt that the accused knew that his act of smothering was likely to cause death. It was done in such a way and with such force that the deceased was totally deprived of any air so that death ensued within ten minutes or so. The evidence also suggests that the accused had effectively immobilised the deceased with the result that she could not put up any struggle.

I accordingly convict the accused as charged.

Addendum

This case is on that side of the scale which borders on murder. Having considered all that has been canvassed in mitigation on behalf of the accused, including the circumstances of the marriage, the good record of the accused as a police officer and the circumstances of the homicide, I sentence the accused to 8 years' imprisonment, taking effect from August 17, 1982. But for the mitigating circumstances I have mentioned, I would have had no hestitation in imposing the maximum of 10 years' imprisonment.

Accused convicted as charged.

Solicitors: *Selvadurai Pala Krishnan & Partners.*